

CROFTING REFORM (SCOTLAND) ACT 2010

EXPLANATORY NOTES

THE ACT

Part 2 – the Crofting Register

Consequential amendments of the 1993 Act

Section 22: Meaning of “croft” etc.

52. **Section 22** amends the meanings of “croft” and “crofter” in section 3 of the 1993 Act. Subsection (2) inserts new section 3ZA into the 1993 Act. This new section applies to any holding, situated in the crofting counties or new areas to crofting, which is registered in the Crofting Register. Section 3ZA(2) states that the holding is a croft from the date of registration; that the land which comprises the croft is determined by its description in the registration schedule; and that, from the date of a registration, any person entered in the registration schedule as the tenant of the croft is the crofter. Subsection (5) confirms that nothing in this section affects whether, before registration, a holding was a croft or any person was a tenant of it. The effect of registration, therefore, is to provide legal certainty that the holding is a croft, and to remove any dubiety over who has the rights and responsibilities conferred by the 1993 Act.

Section 23: Registration of new crofts

53. **Section 23** makes amendments to the provisions on the creation of new crofts in the 1993 Act. Subsection (4) inserts new section 3AA dealing with registration of new crofts. New section 3AA will apply where the Commission has made a determination under section 3A(1) or (2) of the 1993 Act to constitute land, or as the case may be, a holding as a croft. Section 3AA(2) prevents the Commission from forwarding an application to register a new croft in the Crofting Register to the Keeper until the period of appeal outlined in section 52A(2)(b) of the 1993 Act has expired or, where such an appeal is made to the Land Court, it is abandoned or the Court upholds the Commission’s decision under 3A(1) or (2) of the 1993 Act. There is an opportunity to challenge an application for the establishment of a new croft under section 52A of the 1993 Act. There is therefore no right to challenge the registration of a new croft under section 14 of the Act.
54. In relation to a decision to establish a new croft under section 3A(2) of the 1993 Act, where the application to create the new croft has been submitted by the tenant of a holding, the Commission must not forward an application to register the croft unless satisfied: that agreement has been reached between the applicant and the owner of the land as to an amount to be paid by the applicant to the owner in compensation for constituting the holding as a croft; that the applicant and owner have agreed that no amount in compensation is to be payable; or that any amount payable by virtue of section 3B (which sets out how the amount of compensation is to be determined in the absence of agreement) has been duly paid. Subsection (4) makes consequential amendments to section 3B of the 1993 Act.